

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

**Acadia Insurance Company,  
as Subrogee of St. Paul Street, LLC  
Plaintiff**

**v.**

**NER Construction Management, Inc.  
Defendant**

**Civil Action No. 04-12557-WGY**

**AFFIDAVIT OF  
MARK D. SULLIVAN**

I, Mark D. Sullivan, being duly sworn, depose and state under the pains and penalties of perjury that the following statements are true and accurate to the best of my belief:

1. My name is Mark D. Sullivan and I am a Certified Fire and Explosion Investigator (CFEI), Employed by Robson Forensic as a Fire Origin and Cause Investigator. I have been involved in the Fire Service for the past twenty-six years. I have investigated the origin and cause of more than four hundred fires and have also testified as an expert witness in Massachusetts Superior Courts. I have been asked by the Defendant in this case to give my opinion as to the cause and spread of the fire in this case.

2. I am qualified to give such an expert opinion because of my educational background and training, together with my actual hands on work experience. In addition, I have previously given expert testimony with respect to the cause and spread of fires in

the Commonwealth of Massachusetts. A true and accurate copy of my *curriculum vitae* is attached as Exhibit A.

3. I hold a Bachelor Degree in Fire Science from Anna Maria College, Paxton, Massachusetts. I am also a graduate of the Executive Fire Officer Program (EFOP) from the National Fire Academy (NFA). I have also completed the Fire and Arson Course from the NFA as well as the Fire Investigation Course of The Massachusetts Firefighting Academy. I am a member of the International Association of Arson Investigators (IAAI) as well as the International Association of Fire Chiefs (IAFC), I am also a member of The Fire Prevention Association of Massachusetts (FPAM) and I am certified through the National Association of Fire Investigators (NAFI) as a CFEI.

4. I have reviewed the following documents regarding the fire at 2 Saint Paul Street, Brookline Massachusetts on January 31, 2004 at 0806 HRS.

1. Brookline Fire Department FP 32 Massachusetts Fire Report incident # 715
2. NER Construction Management Supervisors incident report.
3. Report by NER Safety Officer Mark Brown.
4. Photos of the fire scene taken by Mr. Brown, 2 days after the incident
5. Complaint from Acadia Insurance Company.

I have also spoken to employees of NER regarding the fire.

5. The Authority Having Jurisdiction (AHJ) for investigating this fire, namely the Brookline Fire Department (BFD) lists the cause of this fire as undetermined

after investigation. Additionally, on the FP 32 incident report the BFD also lists under section K (Item and material contributing most to flame spread) as undetermined.

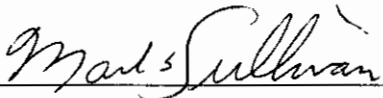
6. On the date of the fire there were no employees of NER Construction Management, Inc. present at the fire scene. On the date of the fire there were a minimum of eight other companies employing separate tradesmen noted to be on site. These workers ranged from electricians, plumbers, drywall workers to general construction workers, in charge of maintaining heat in the building for the different operations. All of these types of contractors work with tools and equipment that will generally provide ignition sources as well as product that would be conducive to rapid flame spread during a fire situation. Photos as well as reports show that there were salamander type heaters operating in and around the area of origin (basement) of the fire. It would be logical to assume that this early morning hour would be the opportune time for refueling of these heaters, a prime time for accidental ignition of combustible items. The basement of this project was used to store construction materials of all types by various subcontractors that would cause a fuel load during a fire situation.

7. According to Massachusetts General Laws, Chapter 148 pertaining to Fire Prevention, NER was not required to have a permit to store the materials that they did have on site in or around the fire building. The construction materials of the other subcontractors on site(of all types of contractors) may have contributed to rapid flame spread during the fire. .

8. The National Fire Protection Association Standard # 241 (NFPA 241) on Fire Safety for construction and demolition sites calls for a Fire Safety Plan. The responsibility of following NFPA 241 would be with the General Contractor of the site (Suffolk Construction Co., Inc.). A thorough fire safety plan calls for on site fire safety manager who oversees the fire safety program and plan. This will cover a pre fire plan, covering issues such as no smoking, housekeeping, security, temporary heating issues and guidelines, hot work permitting, overall fire safety concerns and site policies. Educating employees of potential fire hazards would also be included in this fire safety program. Regarding storing of NER materials, NER personnel were only storing NER materials in allotted storage spaces provided by the general contractor.

9. After careful review of all pertinent data concerning this fire, it is my opinion that NER is in no way responsible for the cause of this fire. Additionally, it is my opinion that NER was not careless, reckless or negligent in the storage of any materials at the job site and that their actions were not responsible for the rapid fire spread and the resulting damages of this fire.

Signed under the pains and penalties of perjury this 3 day of August 2005.

A handwritten signature in cursive script, reading "Mark D. Sullivan", is written over a horizontal line.

Mark D. Sullivan



# **Robson Forensic**

INCORPORATED

**MARK D. SULLIVAN, C.F.E.I.**  
**Fire Investigator**

## **PROFESSIONAL EXPERIENCE**

- 2002 to **Robson Forensic, Inc.**  
present *Associate*  
Conduct technical on-scene fire investigations of structures, vehicles and boats to determine fire origin and cause.
- 1983 to **Falmouth Fire Rescue Department**  
present *Deputy Fire Chief*  
Fire Investigator, Deputy Chief of Fire Prevention, Fire Captain, Fire Lieutenant, Firefighter, Emergency Medical Technician
- 1983 to **United States Air Force National Guard**  
present *Lead Firefighter*  
Assistant Chief, Training Officer, Self Contained Breathing Apparatus Officer, Station Captain, Firefighter
- 1978 to **Otis Air Force Base**  
1983 *Airfield/Structural Firefighter*  
Aircraft Crash Truck Driver/Operator, Airfield and Structural Firefighter
- 1975 to **United States Air Force**  
1977 *Fire Protection Specialist*  
Military Firefighter

## **PROFESSIONAL CREDENTIALS**

Certified Fire and Explosion Investigator, N.A.F.I.  
Executive Fire Officer Designation, National Fire Academy  
Fire Officer I and II  
Fire Instructor I, II and III  
Fire Inspector I  
Massachusetts Certified Emergency Medical Technician #808943

## **EDUCATION**

B.S. Fire Science, Anna Maria College, Paxton, MA, 2000  
A.A. Fire Science, Cape Cod Community College, Barnstable, MA, 1986



# **Robson Forensic**

INCORPORATED

## **MARK D. SULLIVAN, C.F.E.I.** **Fire Investigator**

### **National Fire Academy, Emmitsburg, MD**

- Fire/Arson Investigation, 2002**
- Executive Fire Officer, 2000**
- Executive Leadership, 1998**
- Management of Change, 1997**
- Executive Development, 1996**
- Command and Control, 1993**

### **Massachusetts Firefighting Academy**

- Fire and Arson Investigation**
- First Line Supervisor**
- Basic Firefighting**
- Fire Detection and Suppression Systems**
- Reviewing Building Plans for Sprinkler Systems and Alarms**

### **International Association of Arson Investigators Courses**

- Fatal Fire Investigations**
- Legal Aspects of Fire Investigations**
- Live Burn Flashovers – Fire Investigation Myths**
- Interview Techniques**
- Investigating Vehicle Fires, Evidence Collection and Preservation**

## **PROFESSIONAL AFFILIATIONS**

- National Association of Fire Investigators (NAFI)**
- International Association of Arson Investigators (IAAI)**
- International Association of Fire Chiefs (IAFC),**
- International Association of Firefighters (IAFF)**
- National Fire Protection Association (NFPA)**
- Professional Firefighters of Massachusetts (PFFM)**
- Fire Prevention Association of Massachusetts (FPAM)**
- Barnstable County Fire Chiefs Association (BCFCA)**